

### REMARKS

Claims 8 to 13 are pending in the application, with Claims 8 and 13 being the independent claims. Reconsideration and further examination are respectfully requested.

Claims 8 to 13 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 8 to 10, 15 and 16 of U.S. Patent No. 6,155,666 (Sugimoto) in view of U.S. Patent No. 6,252,615 (Yoshino). Reconsideration and withdrawal of this rejection are respectfully requested.

Turning to specific claim language, independent Claim 8 is directed to an ink jet apparatus for printing on a printing medium with ink and treatment liquid having a function of setting ink. The apparatus includes an ink ejection port for ejecting ink, a treatment liquid ejection port for ejecting treatment liquid, a waste liquid accommodating substance for accommodating waste liquid, a first introducing means for introducing waste ink discharged by recovery operation from said ink ejection port into a first portion of said waste liquid accommodating substance, and a second introducing means for introducing, independently of waste ink, waste treatment liquid discharged by recovery operation from said treatment liquid ejection port into a second portion separated from said first portion of said waste liquid accommodating substance.

Applicant respectfully submits that Claims 8 to 13 of the present invention are not an obvious variation of the claimed invention of the Sugimoto reference. In particular, none of Claims 1, 8 to 10, 15 and 16 of Sugimoto are seen to disclose the foregoing features of independent Claim 8 with respect to a first introducing means for introducing waste ink discharged by recovery operation from said ink ejection port into a

first portion of said waste liquid accommodating substance, and a second introducing means for introducing, independently of waste ink, waste treatment liquid discharged by recovery operation from said treatment liquid ejection port into a second portion separated from said first portion of said waste liquid accommodating substance.

As seen in independent Claim 1 of Sugimoto, there is provided a first flow path and a second flow path for introducing ink and liquid into a waste tank, wherein the first and second flow paths are independent of each other. In contrast, the first and second introducing means of independent Claim 8 of the present invention do not introduce waste liquids to a waste tank, but instead introduce them to a first and second portion of a waste liquid accommodating substance. In independent Claim 1 of Sugimoto, the waste tank has an ink absorbing portion and a liquid absorbing portion which are separated from each other so as to contact the ink with a liquid at a boundary region between the two portions. In contrast, independent Claim 8 of the present invention does not claim that the first and second portions of the waste liquid accommodating substance are separated by a boundary at which the ink and the liquid contact each other. In addition, independent Claim 1 of Sugimoto is different in scope than independent Claim 8 of the present invention because independent Claim 1 of Sugimoto includes insoluble and coagulated ink and also includes an ink receiver, a liquid receiver, and a waste tank, none of which are seen to be claimed in independent Claim 8 of the present invention.

Yoshino is not seen to remedy the foregoing deficiencies of Sugimoto with respect to the obviousness-type double patenting rejection. In particular, Yoshino is merely referenced in the Office Action for allegedly disclosing a waste liquid accommodating substance which is formed in a U-shaped configuration, such as that of dependent Claim 9

of the present invention. However, like Sugimoto, Yoshino is not seen to disclose or suggest first and second introducing means as claimed in independent Claim 8 of the present invention.

"In determining whether a nonstatutory basis exists for a double patenting rejection, the first question to be asked is -- does any claim in the application define an invention that is merely an obvious variation of an invention claimed in the patent? If the answer is yes, then an "obviousness-type" nonstatutory double patenting rejection may be appropriate." M.P.E.P. § 804 (citing *Eli Lilly & Co. v. Barr Labs., Inc.*, 251 F.3d 955, 58 USPQ2d 1865 (Fed. Cir. 2001); and *Ex parte Davis*, 56 USPQ2d 1434, 1435-36 (Bd. Pat. App. & Inter. 2000)).

Applicant submits that the invention of independent Claim 8 is not an obvious variation of the claimed invention of Sugimoto in view of Yoshino, and that the claimed invention of independent Claim 8 is patentably distinct from the claimed invention of Sugimoto. Independent Claim 8 is therefore believed to be in allowable condition, and such action is respectfully requested.

In a similar manner, independent Claim 13 of the present invention also claims a waste liquid accommodating substance having a first portion and a second portion for independently receiving first and second discharged liquids, respectively, wherein said first and second portions of the waste liquid accommodating substance are separated from each other. As discussed above with respect to independent Claim 8, the claims of Sugimoto are not seen to contain such a combination as that of independent Claim 13, and nothing in Yoshino is seen to remedy the shortcomings of Sugimoto in this regard.

Accordingly, independent Claim 13 is also believed to be in condition for allowance, and such action is respectfully requested.

The other pending claims in this application are each dependent from the independent claims discussed above and are therefore believed patentable for the same reasons. Because each dependent claim is also deemed to define an additional aspect of the invention, however, the individual consideration of each on its own merits is respectfully requested.

In view of the foregoing, the entire application is believed to be in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Applicant's undersigned attorney may be reached in our Costa Mesa, CA office at (714) 540-8700. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,

  
Attorney for Applicant

Registration No. 40,593

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-2200  
Facsimile: (212) 218-2200

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